In the

Supreme Court of the United States

October Term, 1961

No. 45

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ETC.,
Petitioner

v.

FREDERICK T. GRAY, ATTORNEY GENERAL OF VIRGINIA, ET ALS.,
Respondents

BRIEF AND APPENDIX ON BEHALF OF RESPONDENTS

DAVID J. MAYS
HENRY T. WICKHAM
Counsel for Respondents

TUCKER, MAYS, MOORE & REED
1407 State-Planters Bank Bldg.
Richmond, Virginia

Page

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Other Authorities

In the

Supreme Court of the United States

October Term, 1961

No. 44

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ETC.,

Petitioner

v.

FREDERICK T. GRAY, ATTORNEY GENERAL OF VIRGINIA, ET ALS.,

Respondents

BRIEF ON BEHALF OF RESPONDENTS

PRELIMINARY STATEMENT

Since the petitioner has failed to fully set forth the facts before the court below, and apparently feels that very little evidence of substance may be found in the record made in the state trial court, respondents are compelled to set forth the facts in some detail.

STATEMENT OF FACTS

The NAACP does not ask a person if he wishes to challenge a law. However, it does say publicly that it believes that a certain law is invalid and should be challenged in the courts. Negroes are urged to challenge such laws and if

one steps forward, the NAACP agrees to assist (R. 295).

Although it is not in the regular course of business, prepared papers have been submitted at NAACP meetings authorizing someone to act in bringing lawsuits and the people in attendance have been urged to sign (R. 296).

Robert L. Carter, General Counsel for the NAACP, is paid to handle legal affairs for the corporation. Representation of the various Virginia plaintiffs falls within his duties. The NAACP offers "legal advice and assistance and counsel, and Mr. Carter is one of the commodities" (R. 320).

The Virginia State Conference of the NAACP has a legal staff composed of fifteen members and in every instance except two the plaintiffs have been represented by members of such staff in cases in which assistance is given (R. 57).

All prospective plaintiffs are referred to the Chairman of the Legal Staff, Oliver W. Hill, and counsel for such plaintiffs makes his appearance when Hill has recommended that they have a "legitimate situation that the NAACP should be interested in" (R. 268).

W. Lester Banks, as Executive Secretary of the Virginia State Conference of the NAACP, speaks at meetings and urges citizens to look for discriminatory conditions, as do other representatives of the Conference. Individuals also are urged to assert their constitutional rights (R. 28, 34).

The chairman of the legal staff (Hill) approves every item of expense and all legal fees paid by the Conference. The president of the Conference approves the legal fees and expenses of Chairman Hill. Further, in every instance, the president has approved the recommendations of the chairman (R. 49).

The legal staff became an official committee of the State Conference in 1945 or 1946 (R. 58). Its members are elected at the annual convention of the State Conference

after being nominated by a nominating committee which, in turn, gets its recommendations for candidates from the legal staff (R. 59). The legal committee, in a sense, perpetuates itself in this manner since there has never been additional nominations from the floor of the Convention (R. 60).

Lawyers who wish to become members of the legal committee of the State Conference may request the president of his local branch to recommend him to the committee or he may be recommended by a member of the legal committee (R. 60).

Without exception, when a member of the legal committee brings a lawsuit in his community he requests other members of the committee to be associated with him (R. 62).

The State Conference pays the expenses and fees of its lawyer for each case with the exception of the fees of Robinson[1] (R. 64).

Since there was some question of whether the provisions of Chapter 33, Acts of Assembly of Virginia, Extra Session, 1956, would prohibit the payment of expenses and fees by the State Conference some of the litigants in the various school segregation cases were informed that they might have to pay the costs of the NAACP lawyers (R. 65). However, since July, 1956, the State Conference has paid to members of its legal committee for services and expenses incurred in school litigation the sum of $12,378.61 (Defs.' Exh. D-3, R. 180, 225). Further, Banks stated that he expects the State Conference to receive more outstanding bills for services rendered by Hill (R. 180).

The initial contact in the Charlottesville school segregation case was made by the president of the local branch of the NAACP requesting Hill to speak with certain parents

[1] Spottswood W. Robinson, III, who was regional counsel for the NAACP Legal Defense Fund and on an annual retainer.

of school children residing in Charlottesville (R. 65). The parents then signed papers, some of which authorized Hill to represent such parents and their children. Other authorization forms passed out at the meeting were signed with no attorney's name appearing. Hill filled in his name as attorney on these after he returned to his office in Richmond (R. 66).

Authorization forms for use in all the school segregation cases were prepared by Hill for his use and the use of other lawyers on the legal committee of the State Conference (R. 66). The form was so written as to authorize a particular attorney to associate such other attorneys as he saw fit (R. 66).

In the Charlottesville case Hill first associated Robinson, Martin, Ely and Tucker, the first three being from Richmond and Tucker residing in Emporia, Virginia (R. 67). The General Counsel for the NAACP also came down from New York for the trial of the Charlottesville case (R. 67).

Upon examination, Hill conceded that the State Conference could have done without the services of Tucker but "it was felt that it would be advisable and helpful if as many as possible of the lawyers who were in a particular community had some participation in the [school segregation] cases". The idea was to train lawyers for future school segregation cases (R. 68).

The authorization form used by the litigants in the Prince Edward case authorized the firm of Hill, Martin and Robinson as attorneys. It did not authorize the association of other attorneys (R. 77). However, Hill testified that the General Counsel of the NAACP was associated because:

> "We don't regard the prosecution of a person's constitutional rights with the same strictness that you would regard, say, handling a contract litigation for

a particular individual client. This is something that the N.A.A.C.P. was sponsoring. These people are actively connected with the N.A.A.C.P. and known to be, and these people whose rights we are trying to protect and assert are interested in getting the vindication of their rights, and they are not as much concerned about the particular lawyers in the majority of instances—as to the number of lawyers, put it that way—as a client would be who was involved in particular single piece of private litigation." (R. 78)

Hill stated that it was well understood in civil rights cases that members of the N.A.A.C.P. and Negroes are entitled to representation by attorneys on the legal committee of the State Conference without cost to them. Negroes were informed of this by Hill and others in the press, in conventions and in meetings of local branches (R. 70, 78, 79).

Hill also testified that it was generally expected that the State Conference would "sponsor" cases as long as the litigants adhere to the principles and policies of the Conference, namely, that a school case must be tried as a direct attack on segregation (R. 69, 70).

S. W. Tucker of Emporia, a member of the legal committee of the State Conference, stated that his duties were "to do whatever was necessary to advance our program. That would entail a study of cases, preparation of cases, trial of cases" (R. 197). He was never employed or compensated by the State Conference prior to his membership on the legal committee (R. 198). He entered Charlottesville and Warren County school segregation cases at the suggestion of Hill and his relationship with Chairman Hill "has been so pleasant and so profitable" (R. 204). Tucker further stated that he handled cases all over the state for the Conference and received a per diem of $60.00 for his services (R. 204, 206).

The respondents introduced certain exhibits to show the policies of the NAACP, the State Conference and its branches, as well as the activities carried on pursuant thereto. For example, exhibit D-10 is a copy of a letter written by the Chairman of the Legal Committee, Oliver W. Hill, to W. Lester Banks, Executive Secretary of the Virginia State Conference concerning the feasibility of NAACP participation in a labor suit involving the State as the plaintiff and Robert Edwards and Willie Savage as defendants. The attorney for the defendants requested financial aid. Hill stated that it was contrary to the policy of the State Conference to grant financial aid in cases not handled by the NAACP (Defs.' Exh. D-10, R. 210, 247, 248).

Exhibit D-4 is a copy of a letter written by the Executive Secretary of the State Conference dated July 1, 1953, wherein he stated that the NAACP was not a legal aid society. It rendered aid in criminal cases only when innocent Negroes had been charged with a crime solely because of race or color, or had been convicted of a crime when denied a proper jury trial, when a confession had been extorted through use of force, or when the accused had been denied the effective use of counsel. Banks testified that the statements contained in this exhibit still correctly state the policy of the Virginia State Conference (Defs.' Exh. D-4, R. 188, 187, 227).

Defendants' exhibits D-7 and D-9 show that all members of the NAACP and their attorneys cannot participate in any lawsuit which seeks to secure separate but equal facilities (Defs.' Exh. 7 & 9, R. 208, 209, 238, 244). The contents of exhibit D-9, being a letter from Spottswood W. Robinson, III, to Reverend N. W. McNair, reads as follows:

> "This is with reference to the matter, recently discussed with me, of participation by this office drafting

a reply to a letter received by your group by the County School Board of Amelia County.

"Upon our conference you advised that the effort of your group is to obtain consolidation of Negro elementary schools in said county, and that the effort is limited to this objective.

"As you were then advised, it is not possible either for this office or the NAACP to lend assistance in connection with this effort. In June, 1950, the Association adopted a policy requiring that all education cases seek facilities and opportunities on a racially nonsegregated basis. This policy is binding upon all Association attorneys, and it is apparent that the plans of your group do not conform to this policy.

"At your request, Mr. W. Lester Banks, Executive Secretary, Virginia State Conference, NAACP, was contacted, and he is arranging to visit your group at an early date to more fully explain the Association's policy and its recommendation as to educational matters in your county." (R. 244, 245)

Respondents' exhibit D-5 likewise states the policy of the Virginia State Conference which is to eliminate racial segregation in public schools rather than seek separate but equal facilities (Defs.' Exh. 5, R. 208, 228).

Part of the respondents' exhibit D-1 is a letter dated May 20, 1954, from the Executive Secretary of the Virginia State Conference to all of its members calling for a meeting to be held in Richmond on June 6, 1954, to "develop techniques to put into immediate effect the NAACP's Atlanta Declarations." Banks also stated in this letter: "* * * No conferences, petitions or other negotiations should be engaged in by NAACP or other responsible leaders with local school officials until after the June 6 meeting" (Defs.' Exh. D-1, R. 19, 214, 215).

Another letter from the Executive Secretary to the local

branches, dated June 16, 1954, dealt with petitions to local school boards and requested the local branches to withhold their proceedings with respect to desegregation until completion of the organization of the State Conference's program. However, forms of petitions prepared by NAACP legal department in New York in collaboration with the attorneys on the legal committee of the State Conference were forwarded to the various local branches directly from New York. (R. 216)

The last part of exhibit D-1 is styled a "confidential directive", dated June 30, 1955, to the local branches and signed by the Executive Secretary of the Virginia State Conference which dealt with the method of processing petitions. It reads in part as follows:

"(1). For your convenience we are enclosing four petitions (2 to the Secretary, and 2 to the President). Upon receipt of the petitions, the Chairman of your Education Committee or another responsible branch official will fill in the appropriate spaces designating (a) County or city, (b) name of School Board, and (c) name of your Division Superintendent. *Do not* fill in the last two lines at the bottom of petition.

"(2). Petitions will be placed only in the hands of highly trusted and responsible persons to secure signatures of *parents* or *guardians* only. Each petition has an attached sheet for the signatures of 35 names and addresses. If a petition bearer needs additional space, provide one or more of the extra sheets being sent under separate cover.

"(3). Petitions are to be signed by *parents* or *guardians* themselves, and if they cannot write someone can sign for them letting them make an (X) mark, but be sure to have a witness to this fact.

"(4). In event a petitioner's handwriting is not *readible*, the bearer of the petition should—in a tactful man-

ner—secure the name and address of the petitioner and attach it to the petition (example: line 15 reads: Mrs. Lucy Wright, Route 1, Box 295, Oldtown, Virginia).

"(5). Signatures should be secured from parents or guardians in all sections of the county or city. Special attention should be given to persons living in *mixed neighborhoods*, or near *formerly white schools*.

"(6). The signing of the petition by a parent or guardian may well be only the first step to an extended court fight. Therefore, discretion and care should be exercised to secure petitioners who will—if need be—go all the way.

"(7). Set an early deadline when petitions will be returned to your Education Committee's Chairman. The quicker they are returned, the sooner your petition can be filed.

"(8). The Education Committee's Chairman will *forward completed petitions to the Executive Secretary of the State Conference*. The Chairman of the Education Committee, or other responsible branch officials will furnish the State Secretary, at the time of transmittal of petitions, the name and location of *meeting site*.

"(9). Immediately upon receipt of petitions by the State Secretary, he will notify all the petitioners and branch officials that an emergency meeting will be held at the meeting site designated by the branch official.

"(10). At that meeting, everyone will be advised as to the next steps. It is absolutely necessary that all of the petitioners be present at this meeting." (R.218,219)

The directions quoted above were established and adopted by an emergency southwide NAACP conference held in June, 1955, as shown by the respondents' exhibit D-8. It reads in part as follows:

"* * * It is the job of our branches to see to it that each school board begins to deal with the problem of providing non-discriminatory education. To that end we suggest that each of our branches take the following steps:

"1. File at once a petition with each school board, calling attention to the May 31 decision, requesting that the school board act in accordance with that decision and offering the services of the branch to help the board in solving this problem.

"2. Follow up the petition with periodic inquiries of the board seeking to determine what steps it is making to comply with the Supreme Court decision.

"3. All during June, July, August and September, and thereafter, through meetings, forums, debates, conferences, etc., use every opportunity to explain what the May 31 decision means, and be sure to emphasize that the ultimate determination as to the length of time it will take for desegregation to become a fact in the community is not in the hands of politicians or the school board officials but in the hands of the federal courts.

"*4. Organize the parents in the community so that as many as possible will be familiar with the procedure when and if law suits are begun in behalf of plaintiffs and parents.*

"5. Seek the support of individuals and community groups, particularly in the white community, through churches, labor organizations, civic organizations and personal contact.

"6. When announcement is made of the plans adopted by your school board, get the exact text of the school board's pronouncements and notify the State Conference and the National Office at once so that you will have the benefit of their views as to whether the plan is one which will provide for effective desegregation. It is very important that branches not proceed at this

stage without consultation with State offices and the National office.

"7. *If no plans are announced or no steps towards desegregation taken by the time school begins this fall, 1955, the time for a law suit has arrived. At this stage court action is essential because only in this way does the mandate of the Supreme Court that a prompt and reasonable start towards full compliance become fully operative on the school boards in question.*

"8. *At this stage the matter will be turned over to the Legal Department and it will proceed with the matter in court.*" (Emphasis added.) (Defs.' Exh. D-8, R. 209, 242, 243.)

A memorandum written by Banks and introduced and marked as respondents' exhibit D-2 shows that the NAACP and the Virginia State Conference have continued the policies and activities outlined above. It reads in part as follows:

"IV. *Up to Date Picture of Action by N.A.A.C.P. Branches Since May 31.*

"A. Petitions filed and replies

A total of 55 branches have circulated petitions.

"B. Where suits are contemplated

Petitions have been filed in seven (7) counties cities. Graduated negative responses received in all cases.

"C. Readiness of lawyers for legal action in certain areas

Selection of suit sites reserved for legal staff. State legal staff ready for action in selected areas."

"D. Do branches want legal action

The majority of our branches are willing to support legal action or any other program leading to early desegregation of schools that may be suggested by the national and state Conference offices. Our branches are alert to overtures by public officials that Negroes accept voluntary racial segregation in public education." (Defs.' Exh. D-12, R. 93, 182, 224)

Banks explained that the language, "Where suits are contemplated" referred to places where petitions had been denied by local school boards (R. 183). The language "Readiness of lawyers for legal action in certain areas" meant financial aid was available (R. 184). Finally, the language "Selection of suit sites reserved for legal staff", meant that members of the legal committee of the State Conference would pick the places where lawsuits would be brought (R. 184).

Barbara S. Marx, one of the plaintiffs in the Arlington school segregation case, testified that she was vice president of the local branch of the NAACP in Arlington County. Before the commencement of the Arlington case she signed a petition which was received by the local branch directly through the mail from the State Conference in Richmond (R. 134). The petition was then discussed in a branch meeting and she helped circulate it. Mrs. Marx also talked with Hill and Robinson about whether legal action would follow the refusal of the petition by the school board (R. 134). She also stated that she knew that Hill and Robinson would be the lawyers when the time came to file the Arlington school segregation suit (R. 135).

Twenty litigants in the school cases testified in the trial court concerning their yearly family income and such in-

come ranged from a low of $3,500 to an estimated high of $19,000. See Appendix I. Thus, of twenty litigants examined, the yearly family income averaged approximately $7,000 for each.

Ten litigants were examined concerning the value of real property owned by them. These estimates ranged from a low of $12,000 to a high of $87,000. See Appendix I. The average of the value of real estate thus held approximates $35,000 for each litigant.

The statement of the facts set forth above is the evidence material to the consideration of the questions presented and will be summarized and discussed where necessary in the respondents' argument.

As to the petitioner's statement of facts, it should be pointed out that the contributions and aid toward the prosecution of lawsuits are largely in the form of furnishing attorneys who are members of the legal committee of the Virginia State Conference. The record shows that the only financial aid furnished is the payment of court costs and other such expenses of litigation.

The NAACP representatives and officers publicly urge Negroes to assert their constitutional rights so it cannot be stated that the Association does not act until some individual comes to it for help (Defs.' Exh. D-8, R. 209, 242).

The statement that the Association does not direct or control litigation is also false. The NAACP has absolute direction and control (Defs.' Exh. D-7, D-9, R. 208, 209, 238, 244).

THE QUESTIONS PRESENTED

1. Do licensed attorneys associated with the petitioner have the right to solicit employment in violation of the Rules of Ethics promulgated by the Supreme Court of Appeals of

Virginia and prohibited by Section 54-74 of the Code of Virginia, 1950, as amended?

2. Does the petitioner have the constitutional right to "run" and "cap" in violation of Section 54-78 of the Code of Virginia, 1950, as amended?

SUMMARY OF ARGUMENT

1. It is clear that a state, in the exercise of its police power, has the right to regulate the practice of law and revoke or suspend the license of an attorney for unprofessional conduct. *Schware* v. *Board of Bar Examiners*, 353 U. S. 232 (1957).

2. It is likewise clear that a state legislature may enact a statute which forbids laymen and corporations to solicit employment for licensed attorneys. *McCloskey* v. *Tobin*, 252 U. S. 107 (1920).

ARGUMENT

Chapter 33 and the Fourteenth Amendment

Chapter 33, Acts of Assembly of Virginia, Extra Session, 1956, amended and re-enacted Sections 54-74, 54-78 and 54-79 of the Code of Virginia, 1950.

The amendment to Section 54-74, which is a part of Title 54, Professions and Occupations, Chapter 4, Attorneys at Law, Article 6, Revocation or Suspension of Licenses: Disbarment Proceedings, Sections 54-72–54-77, inclusive, of the Code of Virginia, provides that malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct shall be construed to include the acceptance of employment from any person, partnership, corporation, organization or corporation with knowledge that such per-

son, etc., has violated Sections 54-78 to 54-83, inclusive, of the Code of Virginia.

The amendment to Section 54-78, which is found in Article 7, Chapter 4 of Title 54 of the Code of Virginia, dealing with runners and cappers, broadens the definition of a "runner" or "capper" to include any person, association, or corporation acting as an agent for another person, association or corporation who or which employs an attorney in connection with any judicial proceeding in which such person, association or corporation is not a party and has no pecuniary right or liability therein.

Section 54-79, which makes it unlawful to act as a "runner" or "capper", was merely amended to conform to the amendment made to Section 54-78.

What may be termed the "modern" procedure for the suspension or revocation of an attorney's license, now found as Section 54-74 of the Code of Virginia, 1950, was first found in the Code of Virginia, 1849, Chapter 104, Section 6, p. 635. There, it was provided that the Supreme Court of Appeals of Virginia could suspend or revoke a license for "mal-practice". This provision was carried into the Code of 1887 without significant change. See, Code of Virginia, 1887, Section 3190. In the Code of 1919, after the word, "malpractice", there was added the phrase, "or any corrupt or unprofessional conduct". See, Code of Virginia, 1919, Section 3424.

In 1932, the legislature of Virginia amended Section 3424, Code of 1919, by making unlawful or dishonest conduct grounds for suspension or revocation of a license as well as malpractice or any corrupt or unprofessional conduct. The legislature also provided at that time that malpractice, etc., shall be construed to include "the improper solicitation of any legal or professional business or employment, either

directly or indirectly". See, Acts of Assembly of Virginia, 1932, Chapter 129, p. 138. The 1932 amendment was carried into the Code of Virginia, 1950, as Section 54-74.

As already pointed out, Chapter 33, Acts of Assembly of Virginia, Extra Session, 1956, amended Section 54-74 merely to provide that malpractice, etc., shall also be construed to include the acceptance by an attorney of a case, or money for the prosecution thereof, which is forwarded by anyone whom he knows obtained the case in violation of Sections 54-78–54-83.1, inclusive, of the Code of Virginia. Therefore, Section 54-74, either as it appeared in 1849 or as it now appears, is not applicable to the petitioner or any other corporation. Its provisions apply only to licensed attorneys. Furthermore, the 1956 amendment does nothing more than codify the law as it existed prior to 1956. Certainly, it was and is unprofessional conduct for an attorney to aid and abet a "runner" or "capper". It follows then that the activities of certain attorneys of the NAACP are prohibited by Section 54-74 of the Code of Virginia, 1950, regardless of the validity of Chapter 33.

Section 54-78 of the Code of Virginia was enacted by the legislature in 1932. See, Acts of Assembly of Virginia, 1932, Chapter 284, p. 512. The act, defining a "runner" or "capper", applies to laymen as opposed to licensed attorneys and it is provided that anyone violating any of its provisions shall be guilty of a misdemeanor. See, Section 54-82 of the Code of Virginia, 1950.

Prior to the 1956 amendment, a "runner" or "capper" was defined to be:

> "any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this state in the solicitation or procurement of business for such attorney at law,

* * *." (See, § 54-78, Vol. 7, Code of Virginia, 1950)[2]

Likewise, it is the contention of the respondents that the activities of the NAACP are prohibited by Section 54-78 of the Code of Virginia as it existed prior to the 1956 amendment found in Chapter 33.

First of all, a corporation cannot practice law and it is a misdemeanor to do so without authority. Sections 54-42 and 54-44, Code of Virginia, and *Richmond Ass'n of Credit Men* v. *Bar Association*, 167 Va. 327 (1937).

In its definition of the practice of law, the Supreme Court of Appeals of Virginia has said:

> "The relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is none the less practicing law though such person may employ others to whom may be committed the actual performance of such duties." (171 Va. xvii)

The NAACP employs a general counsel, Robert L. Carter, and one of his duties has been to represent the various plaintiffs in the school segregation cases. The NAACP offers "legal advice and assistance and counsel, and Mr. Carter is one of the commodities."

The State Conference, which is the "arm" of the NAACP in Virginia, has a legal staff of fifteen lawyers, and all prospective plaintiffs are referred to the chairman thereof to determine whether they have "a legitimate situation that the NAACP should be interested in." If they do, a member of the legal staff will represent them in court and will be paid by the State Conference.

---

[2] The 1958 Replacement Volume, Vol. 7, Code of Virginia, 1950, contains the 1956 amendments to Section 54-78 as well as to Sections 54-74 and 54-79.

The activities of the petitioner are prohibited by *Richmond Ass'n. of Credit Men* v. *Bar Association*, *supra*. There, the credit association undertook to effect collections of business accounts first by personal calls or letter and then by employment of an attorney selected by it. The fees of such lawyer were fixed by the association and it held itself out to be in the business of collecting liquidated, commercial accounts. Furthermore, the association solicited claims both from its own members and others. In the letter employing the lawyer, the association purported to act "as agent for the creditor." It was held to be engaged in the unauthorized practice of law.

The clients or complainants usually come directly to the State Conference at which time they are referred to a member of the legal staff of the State Conference who serves in that capacity without compensation. Under such circumstances the following language found in the *Richmond Ass'n. of Credit Men* case is pertinent:

> "'The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation, and not to the directions of the client.' *Re Co-Operative Law Co.*, 198 N. Y. 479, 92 N. E. 15, 16, 32 L. R. A. (N. S.) 55, 139 Am. St. Rep. 839, 19 Ann. Cas. 879." (167 Va. at p. 335)

Subsequent to the *Richmond Ass'n. of Credit Men* case, a credit association changed its method of procedure by permitting the creditor to select and employ the attorney. However, the attorney was to advise the association of the

progress with regard to the collection. It was held by the Committee of the Virginia State Bar on Unauthorized Practice of Law that the procedure of the attorney reporting to a lay agency acting as an intermediary amount to the unlawful practice of law. Ninth Annual Report of the Virginia State Bar, p. 37. See, also, Opinion dealing with corporate real estate rental agent in Seventeenth Annual Report of the Virginia State Bar, p. 32.

In the Ninth Annual Report of the Virginia State Bar, p. 39, the Committee on Unauthorized Practice also rendered an opinion which is pertinent to consider. The facts were that a union retained an attorney on a salary basis to represent all of its individual members in their claims for compensation before the State Industrial Commission. He received no fees from the individuals for such representation, his sole compensation coming from the salary paid him by the union. The Committee held that the union was a lay agency practicing law without a license; that it was selling the services of a lawyer and intervening between him and his clients; and that the attorney was in violation of the Canons of Ethics.

At this time, it is also important to note that Canon 47 of the Canons of Professional Ethics, adopted and promulgated by the court below, reads as follows:

> "Aiding the Unauthorized Practice of Law. — No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate." (171 Va. xxxv)

Evidence was produced to show that some of the plaintiffs in the school segregation cases had no personal relation with the attorneys for the NAACP. Furthermore, the attor-

neys submitted their bills to the State Conference and not to their so-called clients. It should also be again pointed out that neither the NAACP nor its State Conference makes any investigation as to the financial condition of the individual plaintiffs.

Canon 35 reads in part:

> "Intermediaries.—The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries." (174 Va. xxxii)

The Committee on Legal Ethics of the Virginia State Bar has had the occasion to render opinions under the Canons of Professional Ethics and Opinion No. 10 dealt with a corporation which desired to employ an attorney to consult with its employees as to their personal legal problems. The corporation's interest was to prevent time lost from work and the duties of the attorney were to handle only simple legal problems. In more complex cases, such as lawsuits, the employees would be advised by the attorney to consult an attorney of their own choosing. The corporation's attorney would, however, represent the employee if requested, charging a reasonable fee to be paid by the employee. The Committee held that the acceptance of such employment by the attorney would be unethical. Ninth Annual Report of the Virginia State Bar, p. 32. See, also, Fifteenth Annual Report of the Virginia State Bar, p. 34, Opinion No. 41

dealing with a printing firm offering the services of an attorney to prepare briefs.

Opinion No. 43 involved an attorney who was to be employed by a hospital and furnished with an office therein. He was to collect accounts and advise patients on hospital insurance policies held by them. The Committee ruled that it would be improper for the said attorney to represent patients of the hospital in personal injury claims. Fifteenth Annual Report of the Virginia State Bar, p. 34.

In Opinion No. 45 a Virginia attorney wished to form a corporation to sell insurance policies to persons to furnish them legal services up to a limited amount of fees, the insured to choose his own attorney. The Committee held that it would be improper to insure reimbursement for a plaintiff's attorney fees because to do so would incite, encourage and promote litigation. Sixteenth Annual Report of the Virginia State Bar, p. 30.

The petitioner seems to feel that since it is a nonprofit corporation, the purpose of which is to bring "test" cases under the Fourteenth Amendment, it does not have to comply with laws, which are concededly applicable to other corporations or persons. Typical of the cases cited is *Gunnels v. Atlanta Bar Association*, 191 Ga. 366, 12 S. E. (2d) 602. There, the attorneys did not receive compensation for their services and the Bar Association did not stand between counsel and client or exercise control over the litigation. The usual and proper relationship of attorney and client existed in that case which does not exist under the evidence before this Court.

The N.A.A.C.P. concedes that it is not a legal aid society and that no investigation is made as to the financial status of a prospective litigant. Its activities and policies may be summarized as follows:

1) No aid is granted in lawsuits not handled by it (Defs.' exh. D-10, R. 247);

2) It does not render aid to Negroes merely because they may be indigent (Defs.' exh. D-4, R. 227);

3) It will not render aid to Negroes merely seeking separate but equal facilities (Defs.' exhs. D-5 and D-9, R. 228, 244);

4) It will furnish aid only when its own lawyers handle the case (Defs.' exh. D-10, R. 247);

5) It directs and controls the litigation and thus stands between the client and attorney (Defs.' exhs. D-7 and D-9, R. 238, 246); and

6) It solicits business (Defs.' exhs. D-2 and D-8, R. 220, 241).

Courts in other jurisdictions have condemned activities similar to the activities of the NAACP.

In the case of *Re Maclub of America, Inc.* (Mass.), 3 N. E. 2d 272 (1936), the court found that an automobile association had been formed for the purpose of furnishing its members with lists of attorneys who would perform services for such members free of charge. The attorneys would look to the association for payment. The association knew nothing of the particular cases and took no part in the direction or control of them. Furthermore, it had no salaried attorneys of its own.

Under the above set of facts, the Massachusetts court held the association to be engaged in the illegal practice of law. The court found:

1) Relationship of attorney and client did not exist between the association's member and the attorney;

2) The particular attorney was compensated by the association and subject to its instructions;

3) The association possessed the right to hire and fire; and

4) The practice was considered a contract to furnish legal assistance rather than a contract to pay for legal assistance.

The case of *People ex rel Chicago Bar Association* v. *Chicago Motor Club*, 362 Ill. 50, 199 N. E. 1 (1935), involved a nonprofit corporation organized for the benefit of motorists. The following facts were found by the court:

1) The objects of the corporation could be attained only through a voluntary association such as it was and only through the lawyers employed by it;

2) The results achieved by the association and its legal department benefited not only its members but all motorists;

3) The association and its legal department had been approved by the local bar association and had received an exemption from the operation of the canons of ethics;

4) The association solicited membership and its members were entitled to request the services of an attorney; and

5) The members of the association were not permitted to choose their own attorneys.

The Illinois court found that the association was engaged in the illegal practice of law even though it was a nonprofit

organization and had rendered valuable service to its members and the community.

A corporation organized to permit united protection of certain taxpayers in matters of taxation and legislation was considered in the case of *People ex rel Courtney* v. *Association of Real Estate Taxpayers*, 4 Ill. 102, 187 N. E. 823. There, the Illinois court found the following facts:

1) Owners of real estate were invited to become members of the corporation and pay fees;

2) The corporation employed lawyers to represent it in all litigation concerning the validity of certain tax legislation;

3) The attorneys were selected and paid by the corporation; and

4) The corporation determined what questions were to be litigated.

The court found that the corporation was engaged in the illegal practice of law even though the lawsuits were brought in the name of individual members and fees in certain cases would have cost an individual approximately $200,000.

The case of *Doughty* v. *Grills*, 37 Tenn. App. 63, 260 S. W. 2d 379 (1952), involved a situation where the defendant advised members of a railroad brotherhood of certain services furnished by its legal department. The defendant had advised a widow to go to the regional counsel for the brotherhood in order to obtain free legal advice though he insisted that he had advised her and other members of the brotherhood that the employment of the regional counsel was optional.

The defendant contended that he only referred members

of the brotherhood to its regional counsel for free advice. After the advice was given the regional counsel would then resume the private practice of law.

The court stated that the distinction mentioned above was too "fine cut". Such a story "could only be accepted as true by one extraordinarily naive and unrealistic."

An injunction was issued restraining the defendant and others from acting as "runners" and "solicitors" on the ground that they were assisting the brotherhood in the illegal practice of the law. For other examples of similar schemes see *Hildebrand v. State Bar of California*, 225 P. 2d 508 (1950); *Atchison, Topeka & Santa Fe Railway Co. v. Jackson*, 235 F. (2d) 300 (10th Cir., 1956); and *In Re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 150 N. E. 2d 163 (1958).

As to Section 54-74 of the Code of Virginia, a state has the right under it police power to establish standards for those who wish to practice law. *Schware v. Board of Bar Examiners*, 353 U. S. 232 (1957). Furthermore, a state may revoke or suspend the license of an attorney who is guilty of unprofessional conduct. *Richmond Ass'n. of Credit Men v. Bar Association, supra*, at pp. 334-336 and *Campbell v. Third District Committee*, 179 Va. 244, 249, 250, 18 S. E. (2d) 883, 885 (1942).

It is likewise clear that Section 54-78 of the Code of Virginia, which forbids laymen to solicit employment for licensed attorneys, is a valid police regulation. *McCloskey v. Tobin*, 252 U. S. 107 (1920).

The sections in question do not prevent the giving of assistance to negroes to vindicate their constitutional rights to be free from racial discrimination as alleged by the petitioner. They only prevent the solicitation of employment by licensed attorneys and the running and capping by laymen

or corporations. Clearly, the Fourteenth Amendment does not prohibit this type of legislation.

CONCLUSION

For reasons stated above, it is respectfully submitted that the provisions of Sections 54-74 and 54-78, both prior to and subsequently to the enactment of Chapter 33, Acts of Assembly of Virginia, Extra Session, 1956, are constitutional in all respects. Accordingly, the decision of the Supreme Court of Appeals of Virginia should be affirmed.

Respectfully submitted,

DAVID J. MAYS
HENRY T. WICKHAM
Counsel for Respondents

TUCKER, MAYS, MOORE & REED
1407 State-Planters Bank Bldg.
Richmond, Virginia

October 20, 1961

CERTIFICATE OF SERVICE

In accordance with paragraph 1 of Rule 33 of this Court, I hereby certify that three copies of the foregoing brief has been mailed to Robert L. Carter, 20 West 40th Street, New York 18, New York, attorney for petitioner, by depositing the same in a United States post office, with first class postage prepaid, this 20th day of October, 1961.

HENRY T. WICKHAM

APPENDIX I

Witness	Approximate Family Income	Real Estate Owned
James W. Harris (R. 96) 618 33rd St. Newport News, Va.	$5,000 3,500 (w) 8,500	$ .....
Dr. E. C. Downing (R. 102, 100) 1229 27th St. Newport News, Va.	12-16,000	30,800
Louis Thompson (R. 105, 106) 829 21st St. Newport News, Va.	5,000	15,000 ($2, or $3,000 liens)
David W. Morris (R. 108) 1818 Marshall Avenue. Newport News, Va.	.....	50,000 ($20,000 in liens)
Thomas W. Selden (R. 112, 111) 3100 Madison Ave. Newport News, Va.	19,000	21,000
Marie E. Patterson (R. 116) 751 20th St. Newport News, Va.	13-17,000	.....
Jerry C. Fauntleroy (R. 117) 3303 Roanoke Ave. Newport News, Va.	8,100	.....
James E. Manson (R. 122, 123) 3808 Marshall Ave. Newport News, Va.	4-5,000	30,000
Arthur L. Price (R. 126, 127) 3012 Marshall Ave. Newport News, Va.	6,000	12,000
Barbara S. Marx (R. 136, 137) 6897 N. Washington Blvd. Arlington, Va.	4,000	30,000

Witness	Approximate Family Income	Real Estate Owned
E. Leslie Hamm (R. 139) 1900 N. Camden St. Arlington, Va.	5,000 3,000 (w) 8,000	18,000
Edward D. Strother (R. 141) 2819 S. 18th St. Arlington, Va.	8,000	.....
George L. Nelson (R. 141) 2005 N. Camden St. Arlington, Va.	5,000	.....
Audrey T. Newman (R. 144) 5554 Lee Highway Arlington, Va.	4,000 (h)	.....
Josie F. Pravad (R. 146) 2900 S. 20th St. Arlington, Va.	She and husband work for Federal Gov't. (She is a a GS-4)	.....
Ruth M. Rout (R. 150) 3011 17th Road Arlington, Va.	3,400 3,500 (h) 6,900	.....
Harry Strother (R. 152) 2102 N. Dinwiddie St. Arlington, Va.	3,800	.....
Dr. Harold M. Johnson (R. 210) 2901 Lexington St. Arlington, Va.	.....	87,650
Alex M. Davis (R. 155) 607 10½ St., N.W. Charlottesville, Va.	3,500	.....

Witness	Approximate Family Income	Real Estate Owned
Eugene Williams (R. 157) 620 Ridge St. Charlottesville, Va.	4,000	.....
Dr. M. T. Garrett (R. 161, 162) 320 W. Main St. Charlottesville, Va.	7,000 4,000 (w) 11,000	50,000
George R. Ferguson (R. 164, 165) 702 Ridge St. Charlottesville, Va.	1,800 3,600 (w) 5,400	.....
William M. Smith (R. 167) 1709 Preston Ave. Charlottesville, Va.	5,000	.....
J. Russell Arnett (R. 169) Route 5, Box 152 Charlottesville, Va.	6,000	.....

(h) Husband.
(w) Wife.